

KEEPING YOU UP TO DATE WITH WELFARE AND DISABILITY RIGHTS

UPDATES

Keeping up with new legislation is costly and time-consuming. Our bi-monthly Updates keep DA members and subscribers informed throughout the year with the latest welfare and disability rights news.

OUR PUBLICATIONS

Our publications and web-based resources are written for disabled people and trusted by professional advisers, MPs, journalists and policy workers.

FURTHER INFO

For further information about membership, publications and Disability Alliance activities and campaigns visit our website www.disabilityalliance.org

STOP PRESS

DA AGM

DA will be taking the final decision about merging with NCIL and Radar to form a new Disability Rights Partnership at our Annual General Meeting on 6 October 2011. We want you to be involved in making this important decision which will affect the services you receive as a member.

The AGM will be in central London and will be followed by drinks to celebrate the past year's work.

For further information contact Michèle Holland on 020 7247 8776 or email mholland@disabilityalliance.org

Disability Alliance Updates

£18.00 annually

Free to members

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HELP SHAPE OUR 22 NOVEMBER CONFERENCE

DA is developing a major national conference in London on 22 November 2011. If you'd like a specific issue raised or would like a particular speaker invited please let Neil Coyle (email ncoyle@disabilityalliance.org) know. Please also hold the date in your diary and remember only members will get discounted places.

ABOUT DISABILITY ALLIANCE

We provide advice, produce publications and campaign for improvements to the welfare system so that it better reflects disabled people's higher costs of living. Our aim is to break the link between poverty and disability.

Benefits, policy and campaign updates



Neil Coyle and Ken Butler look at the concerns raised by a new report by the Work and Pensions Select Committee

IB migration process causing 'fear and anxiety' say MPs

The incapacity benefits (IB) migration process, which began nationwide in April this year, is causing fear and anxiety amongst disabled people, say MPs, with many people affected being suspicious that the government's only objective is to save money. Neil Coyle and Ken Butler outline how a new report by the Work and Pensions Select Committee highlights numerous concerns.

Concerns raised in the new report from the Select Committee include:

- Atos' poor performance in delivering medical assessments;
- whether the Work Capability Assessment (WCA) is improving;
- are disabled people moving from welfare into work?;
- the media's coverage of IB migration;
- the role of charities in welfare reform;
- whether the WCA is a 'real world test'; and
- limiting contribution based ESA payment to 12 months.

Atos' performance

The Committee is critical of how Atos Healthcare conducts the 'work capability assessments' (WCAs) to inform Jobcentre Plus decisions on someone's eligibility for employment and support allowance (ESA). Its failings include:

- appointments for assessments routinely overbooked by 20%, meaning some people could not be assessed despite turning up as arranged;
- significant problems with its call-centre service answering calls first time; and
- some assessments centres not being accessible to disabled people.

Some claimants had their benefit stopped for not attending appointments when their non-attendance was actually the result of administrative errors on the part of ATOS, the committee found.

Commenting on the inadequacies of ATOS Healthcare, the Chair of the Committee Dame Anne Begg said:

"There have been failings in the service Atos Healthcare has provided, which has often fallen short of what claimants can rightly expect. This has contributed significantly to the mistrust which many claimants feel about the whole process ... the Department [for Work and Pensions] needs to do more to ensure that Atos treats claimants properly and that it produces accurate assessments."

As a consequence the committee recommends that:

- when the Atos contract is re-let in 2015 and in future contracts for other medical assessments, the DWP should review the performance indicators, with significant financial penalties built in if standards are not met; and
- the Government should consider contracting a second provider to deliver the ongoing WCAs for new ESA claims when the reassessment of existing claimants has been completed, in order to drive up performance.

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Is the WCA improving?

However, the committee says that welcome improvements have been made to the reassessment process as a result of last year's review by Professor Malcolm Harrington and the trial of the IB migration process carried out in Aberdeen and Burnley. Dame Anne Begg MP said: *"The decision-making process is showing signs of improvement, with more decisions on work capability being 'got right the first time' ... Better decision-making will save the Government money in the medium and long term, through fewer appeals and greater efficiency in the process"*

DA is hugely disappointed that the committee appear to conclude that the WCA is now working well. This is disputed by the disabled people routinely contacting us with concerns about their experience. The number of appeals against WCA decisions remains cause for concern also; DWP estimate a rise to 436,000 in 2011/12 which could cost over £25 million. The WCA remains a barrier to an effective system geared towards ensuring disabled people can access appropriate support to get and keep work.

Is 'welfare to work' occurring?

The committee also emphasises the need to better explain why people are being re-assessed and what the outcome is intended to be: more disabled people supported to work. The report recommends that: *'the Government must be proactive in explaining its aims and spreading the positive messages about the benefits of work and the support which is available to find work, and in engaging employers'*.

A third of disabled people live in poverty in the UK. DA believes work can be a route out of poverty for disabled people but the focus of DWP efforts to date has been re-assessments. No evidence has yet emerged to demonstrate if disabled people are moving into work. We are pleased that Professor Harrington's next review of the WCA will cover this issue; it was one of our recommendations to his first review.

Media coverage of IB migration and DWP's role

The committee also stresses negative media portrayals: *'Media coverage of the reassessment is often irresponsible and inaccurate and we deprecate the pejorative language which some sections of the press use when referring to benefit claimants. Portraying the reassessment of incapacity*

benefit claimants as some sort of scheme to 'weed out benefit cheats' shows a fundamental misunderstanding of the Government's objectives'. The committee recommendation on this issue was that: *'more care is needed in the way the Government engages with the media and in particular the way in which it releases and provides its commentary on official statistics on the IB reassessment.'*

DA has frequently raised concerns about inaccurate and misleading DWP releases and media coverage, including involving the Press Complaints Commission which upheld one issue covered by the Daily Mail. For further information on that case see: www.disabilityalliance.org/mailetter.htm

DA was especially disappointed that, on the day the committee report was published, DWP released further statistics which led directly to offensive and stigmatising media coverage. The committee chair has written to the minister involved about her concerns; see: www.parliament.uk/business/committees/committees-a-z/commons-select/work-and-pensions-committee/news/letter-to-chris-grayling-benefit-payment-statistics/

For the Disability Benefits Consortium response to the latest press offensive see: www.rightsnet.org.uk/forums/viewthread/1790/



Dame Anne Begg, MP, Chair of the Work and Pensions Select Committee

Should charities highlight the benefits of reform?

The committee also suggested charities and other stakeholders had a duty to be more supportive of the process: *'representative organisations should allay the concerns about reassessment by giving equal weight to publicising the opportunities an effective assessment process could offer, and the back-to-work support available from Government, as they do to fulfilling their important role in raising legitimate concerns.'*

DA supports action to ensure disabled people genuinely get support to move into work where possible. However, DA cannot offer support for an ineffective assessment process that routinely fails to identify disabled people's needs. Sadly, we do not have an effective process currently and the WCA was toughened further in April 2011 which may see further disabled people inaccurately found fully fit for work.

Is the WCA a 'real world test'?

The committee also concluded that the WCA had an identity problem: *'the Government needs to do more to clarify whether the purpose of the WCA is to be an eligibility test for benefits or whether it is a diagnostic test to assess a person's ability to work. It is not yet clear whether it is quite achieving either of these effectively.'*

DA believes a 'real world' test is required to ensure support is adequately accessible for disabled people.

Time-limiting contribution-based ESA to 12 months

In relation to the Government's proposal to for time-limiting contribution-based ESA to 12 months for those in the ESA work related activity group, the committee recommends that the DWP: *'conducts research on whether allowing former IB recipients to claim contributory ESA for more than 12 months would provide a more realistic timeframe for them to enter employment, taking account of the two years of employment support available through the Work Programme.'*

DA is particularly pleased to see the committee's conclusion on ending support for some disabled people after just one year – set to commence from April 2012 (but backdated ie the clock is ticking now).

DA is very concerned over 400,000 disabled people will lose contributions based ESA. Government plans ignore the evidence on the time many disabled people need to find appropriate work, including the 87% previously using Pathways to Work who did not find employment in a year.

Commenting on the WCA, Neil Coyle, DA's Director of Policy said:

"DA welcomes efforts that help disabled people get and keep work. Welfare reform should be monitored to ensure it is delivering disabled people into employment. Our mission is to break the link between poverty and disability. A third of disabled people live in poverty and only half working age disabled adults are in work. We believe employment offers one route out of poverty for many disabled people.

However, for 'welfare to work' to work the testing system that identifies disabled people's support needs must be accurate and reliable. The WCA is neither and rising numbers of appeals and related costs do not suggest the WCA is working well. Instead of ensuring the assessment process is made fit for purpose the Government is spending a further £675 million replicating the model across the benefits system from 2013 generating further misery and anxiety for disabled people."

The Work and Pensions Committee's report: *The role of incapacity benefit assessment in helping claimants into employment* is available @ www.publications.parliament.uk/pa/cm201012/cms/elect/cmworpen/1015/101502.htm



New ESA test will affect everyone on incapacity benefits

The 2nd edition of our valuable guide to ESA is out now

Order your copy now
£10.00 post free per copy
£5.50 for people on benefits

Disability alliance

Second WCA review: Professor Harrington in new call for evidence

As part of his second independent annual review of the work capability assessment (WCA) Professor Malcolm Harrington has issued a new call for evidence.

Among the key recommendations of Professor Harrington's first independent review to improve the "fairness and effectiveness" of the WCA system included:

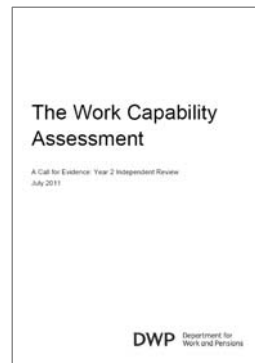
- ensuring each WCA report contains a personalised summary of the Atos healthcare professional's recommendations;
- piloting the audio recording of Atos assessments;
- ensuring Atos employ "mental, intellectual and cognitive champions"; and
- empowering Decision Makers so that they are able to take the right decision and can gather and use additional medical information appropriately.

Launching his second year review, Professor Harrington said: *"The call for evidence this year is deliberately more focussed than last year, asking questions about more specific issues. This will help me gather further evidence about the key issues on which I believe this and future reviews need to focus on."*

The specific questions set out by the call for evidence are:

- have you noticed changes to the WCA process as a result of the Year 1 recommendations? If so, what are these changes?
- are there further areas of work that you think should be added to the programme of work for Year 3? If so, what should these consider?
- at what stage should we stop making changes to the system and let the changes already being made bed in to ensure they are having the desired impact?
- does the Year 1 recommendation go far enough in placing the right emphasis on the face-to-face assessment?
- are you aware of any concerns about the face-to-face assessment, and if so where have these been focused?
- if you have heard specific concerns about the IT supporting the assessment, do you have any robust evidence about how this adversely affects the assessment or its outcome?

- is there a need to present and explain the face-to-face assessment in a different way, making it very clear to claimants what it will involve and how a functional assessment relates to work capability?
- what one thing would you change about the WCA to make it operate more fairly and effectively?



The deadline for responses to the call for evidence is 16 September 2011.

For more information and to get involved visit www.dwp.gov.uk/docs/wca-call-for-evidence.pdf

Advisers' views on the WCA: new survey

The Disability Benefits Consortium (DBC) wants to gauge what the impact Professor Harrington's first recommendations has been by collecting the views of welfare advisers and caseworkers.

This survey will be used to feed into the second year of Professor Harrington's review of the WCA and will help to ensure that any further improvements that are needed to the process are made.

The survey should only take around 10 minutes to complete. All responses are anonymous and data will only be used by DBC and will be held in accordance with DBC member organisation's Data Protection policies.

If you have any questions about the survey please contact t.pollard@mind.org.uk

You can take the DBC survey by visiting: www.surveymonkey.com/s/wca_year_one_recs

DA potential legal action vs DWP over DLA plans

Unity Law are our legal partners and can offer help to you and your members and take cases without charging the people you work with and for. On Friday 1st July Unity Law issued a 'letter of claim' against DWP on behalf of Disability Alliance. Neil Coyle explains why.

The letter of claim to DWP outlined our concerns regarding DLA proposals within the Welfare Reform Bill and highlighted grounds for potential legal proceedings. A letter of claim is a semi-formal process that could develop into a Judicial Review at a later date.

Our letter's main focus was that DLA proposals (Part 4 of the Welfare Reform Bill) may breach DWP responsibilities under the Equality Act and EU Treaties but also raised concerns about the consultation process and timeframe.

We also sought a Freedom of Information request on the decision making process behind the Government's plans – i.e. how cutting 20% of 2015/16 projected DLA expenditure on working age disabled people was agreed. We also sought information on how the potential impact was considered.

Initial response

DWP has not fully answered our concerns yet but has stressed the Government does not believe there is a case to answer. DWP also emphasises that if the abolition of DLA removes a barrier to work then disabled people's equality of opportunity may be enhanced.

DA believes:

- the evidence is very thin to suggest DLA is a barrier to work;
- Government proposals may prevent some disabled people currently in work from maintaining employment. Over half of the people receiving DLA who responded to our DLA survey suggested they may have to stop work if they lost some/all of their current support; and
- that DWP obligations to promote disabled people and their families' equality of opportunity includes issues beyond work, including health and general wellbeing. Many of the respondents to our survey emphasised that if DLA was reduced/lost that health conditions could end up badly managed and hospitalisation might occur for example.

But we are still waiting for the complete answer to all the questions relevant to our potential legal action. We will publish this in due course.

Legislative plans

DWP had intended for the Welfare Reform Bill to receive its Second Reading in the House of Lords in July. The Government has now delayed the Welfare Reform Bill until at least September 2011. We hope this allows sufficient time for our concerns to be answered. DWP still expect legislation to be enacted in November 2011.

Next steps: can you help?

DA is considering next steps now. But if our concerns are not addressed and if our legal advice remains that there is a strong case, DA and partners may consider challenging the Welfare Reform Act.

Many thanks to all members who participated in our survey which helped us decide to issue the letter of claim. 98% of respondents backed taking action. We are very grateful for your support. Action for ME and Action for Blind People deserve particular thanks for their swift and public support for our action.

We are also very grateful to the members who have offered financial support to take legal action if necessary; we are incredibly grateful for this offer. DWP have made it very clear the Government will seek any costs from DA if we were to challenge and lose. If you can help with a potential full judicial review with funding, resources or publicly supporting our challenge please contact ncoyle@disabilityalliance.org

Further information on the legal challenge and a copy of the letter of claim is available at:
www.disabilityalliance.org/dlachallenge.htm

We will keep this page updated as DWP provide further information and on our next steps.

Further information on the support Unity Law offer is available on our website at:
www.disabilityalliance.org/f15.htm

Work and Pensions Committee DLA reform inquiry

The Work and Pensions Committee has launched an inquiry into the proposal to replace disability living allowance (DLA) with the personal independence payment (PIP).

The government published its response to the consultation on DLA reform proposals in April 2011 and aims to introduce the replacement PIP for all working-age claimants from 2013.

The call for evidence will focus on the following issues:

- the need for DLA reform, including: how well understood DLA is; why the DLA caseload and expenditure has increased; the effectiveness of the decision-making and review process for DLA;
- the implications of a reduction in expenditure, including: the implications of focusing on those with the greatest needs; the likely impact of having only two rates of PIP in the 'daily living' component; the number of current DLA recipients who would not be eligible for PIP;
- the extent to which overlaps in funding exist, particularly with local authority and NHS funding, and including for people in residential care or hospital;
- whether automatic entitlement should apply to people with some conditions or impairments and whether some people should receive awards for indefinite periods;
- the implications of a six month qualifying period;

- the extent to which PIP will act as a gateway to other benefits, including Carers Allowance and the Motability Scheme;
- the design of the PIP assessment, including: the assessment criteria and design; whether the assessment can objectively assess those with mental, intellectual and cognitive conditions and with fluctuating conditions; and the extent to which aids and appliances should be taken into account in the assessment;
- the delivery of the PIP assessment, including: who should carry it out; the approach to tendering for the assessment contract; who should make the award decisions; whether there are lessons to be learned from the Harrington Review of the Work Capability Assessment; and interaction with other eligibility assessments;
- how DLA/PIP should apply to children and people over the state pension age;
- the steps DWP needs to take to ensure that its reform proposals are clearly and effectively communicated to claimants and the general public; and
- transitional arrangements.

The deadline for responses to the inquiry is **2 September 2011**. You can find out more about the call for evidence and how to respond @ www.parliament.uk/business/committees/committees-a-z/commons-select/work-and-pensions-committee/inquiries/dla/

Independent review of mobility needs of people in care homes



Lord Low, the President of Disability Alliance, has launched an independent review of the mobility needs of people living in care homes are met and funded.

Ending DLA mobility support for care home residents was announced in the October 2010 Spending Review. While a 'review' of the Government plan was announced by the Prime Minister in March 2011 no terms of reference for it have ever been published nor any start/end date.

The independent review has been launched due to disabled people and charities' dismay and frustration with the secrecy shrouding an internal DWP review of the issue despite the potential impact on over 78,000 disabled people and their families.

The review is genuinely independent, chaired by crossbench peer Lord Low CBE and will be facilitated by disability charities Mencap and Leonard Cheshire Disability.

Neil Coyle, Disability Alliance Director of Policy, says: "Nine months have passed since Government plans were first announced.

But there is no clarity on how the proposals will impact on the thousands of disabled people and their families affected who are desperately anxious and fearful that they will lose essential support. Disability Alliance hopes the independent review will help better inform Government plans."

The Low review will consult with a wide range of external stakeholders, including disabled care home residents, family carers, and care home providers as well as independent experts/researchers. Expert witnesses will be called to present oral evidence to the steering group.

It will examine and provide deliverable recommendations on:

- how the mobility component of DLA is being used by care home residents and impact of loss of benefit;
- funding arrangements for personal mobility needs between local authorities and care home providers; and
- responsibilities of care home providers in relation to the personal mobility needs of residents.

The deadline for responding to the review's call for evidence is 10 October 2011. For more information and to get involved visit <http://lowreview.org.uk>

Removing welfare benefits from scope of legal aid

The government is to press ahead with its proposal to remove welfare benefits cases from the scope of legal aid. Ken Butler explains more and invites readers to play their part in supporting the Justice for All campaign.

The *Legal Aid, Sentencing and Punishment of Offenders Bill 2011* removes from the scope of legal aid a number of areas of law including: welfare benefits, employment, housing (except in cases involving homelessness or risk to health and safety), and debt (except in cases relating to certain proceedings where the home is at risk).

The Ministry of Justice says legal aid will however be retained for judicial review of welfare benefit decisions and for claims about welfare benefits relating to a contravention of the Equality Act 2010 that are currently funded.

The Bill has been published despite the Ministry of Justice having received over 5,000 responses to its recent consultation on legal aid reform of which 90% were against the proposed changes.

DA strongly opposes the withdrawal of legal aid in relation to social welfare law. We are a member of Justice for All – the campaign to ensure everyone is treated fairly under the law, no matter who they are, how much money they have or where they live.

Membership of Justice for All is open to individuals and organisations who believe free, independent advice and representation on legal matters is essential to achieve justice for all.

Further information about Justice for All and how you can play your part to support free legal advice is available @ www.justice-for-all.org.uk



DA launches new Tribunal Support Unit



Disability Alliance has launched a new Tribunal Support Unit (TSU) to offer training and specialist support for first-tier advice organisations. The project will support advisers assisting claimants with disabilities who are appealing to the First Tier Tribunal or the Upper Tribunal. Keith Venables, DA's TSU advisor explains more.

The project is funded by the Trust for London and is mainly focused on London based advisors, but we will be able to provide some support and training for DA member agencies working outside London.

What does the TSU do?

The TSU is a free service providing advice, information and practical support to paid and voluntary workers who give advice on social security benefits and tax credits. It offers help with complex benefit questions through all stages of the decision-making and appeals systems.

Advice is available by telephone or e-mail, but we can also meet with London-based advisors to discuss more difficult cases in detail.

For more experienced advisors, we can offer a second opinion on complex claims – perhaps helping to trace that piece of case law or guidance that you know is out there somewhere, or helping to identify errors of law that can be appealed to the Upper Tribunal.

Support

We offer advice and assistance with all aspects of challenging benefit or tax credit decisions – helping to find the best solution to complex problems and to prepare appeals to tribunals, including:

Before you appeal

- analysing benefit decisions to identify grounds for appeal
- identifying the grounds and time limits for each stage of disputing a benefit decision
- investigating alternative solutions to making an appeal
- identifying the relevant benefit legislation and finding supportive case law
- gathering supporting evidence
- drafting letters and appeals

Preparation

- explaining what papers you should expect to receive at each stage of an appeal
- understanding the appeal papers
- preparing written submissions to tribunals
- advice on requesting postponements or adjournments

Presentation

- what to expect at an appeal hearing
- identifying the information the tribunal needs from you and from the appellant
- explaining the role of tribunal members
- understanding tribunal decisions

Appeals to Upper Tribunal

- analysing tribunal decisions to identify errors of law
- help drafting grounds of appeal
- advice about refusals of permission to appeal
- advice on submissions and relevant caselaw
- understanding the process

Training

Part of the TSU's role is providing training courses to advisers. We will be developing a training programme in the near future and welcome your input. We plan to offer a range of courses including:

- introductory sessions on the main disability benefits such as DLA and ESA
- the decision-making and appeals system
- preparing and presenting appeals
- specific types of appeal – DLA, work capability assessment, etc
- appeals to the Upper Tribunal

Our funding for training is limited, so we will be charging for courses. There will be discounts for Disability Alliance member organisations. We are looking for training venues, in London and beyond, and will offer free or heavily discounted places to organisations able to provide us with a venue.

We can also offer in-house training, so please contact us to discuss your training needs.

The TSU advice line is open Mondays, Wednesdays and Fridays from 10am-12pm and 2-4pm on telephone 0207 1010 397. Our Tribunal Support Advisor, Keith Venables, can be contacted by email at kvenables@disabilityalliance.org (please provide as much detail as possible about your case in your email).

News in brief

Welfare rights, social care and disability-related updates

Consultation launched on supported housing HB reform

The government has launched a consultation on housing benefit for people in supported housing. The consultation report identifies those who need supported housing as those who need:

- lower levels of personal care and support to help them remain in the community (often provided in more communal and easily recognisable types of accommodation such as hostels, refuges, and sheltered housing); and
- more intensive levels of personal care and support to help them live in the community (often provided in housing specifically built, acquired and/or adapted for the individual tenant).

For those in the first group, the Government proposes to pay the local housing allowance but with fixed additions which will continue to recognise the higher costs of providing this type of housing.

However for those in the second smaller group, the Government proposes that additional help will be provided, where necessary, over and above the standard local housing allowance.

This extra help will no longer be decided by those processing benefit claims but by local authority officials. Such decisions could possibly be made within the commissioning process for supported and specialist housing in which the individual is involved or represented.

The consultation is aimed primarily at those involved in the commissioning, funding and providing of supported housing as well as those needing support to live independently, such as vulnerable older and disabled people, and those who represent their views.



The closing date for responses is 9 October 2011.

For more information and to get involved visit www.dwp.gov.uk/consultations/2011/supported-housing.shtml

Disabled people face extra difficulties sorting out their debts

People with disabilities face unnecessary extra difficulties when trying to sort out their debt problems, a new report from Citizens Advice has found. Around one in five people seeking advice about debt problems from CABs in England and Wales are disabled or have a long-term health problem.

The new report, *Double Disadvantage*, finds that:

- creditors fail to recognise specific needs or make reasonable adjustments in a consistent way; and
- many disabled clients would not have engaged with their creditors without the help of a specialised debt advice service.

Based on evidence from CABs across England and Wales, the report also reveals the additional detriment disabled people often face on top of their debt problems, such as:

- poor, untailored and inconsistent communications from creditors;
- aggressive and inappropriate selling practices; and

- unfair practice relating to debt collection or enforcement.

Citizens Advice Chief Executive Gillian Guy said: *“Being in debt can be very disempowering for consumers but our research shows that disabled people in debt face a double disadvantage. They are disempowered by both their financial difficulties and the failure of creditors to take account of their needs through reasonable adjustments.”*



Double disadvantage – the barriers and business practices making debt a problem for disabled people is available @ www.citizensadvice.org.uk/double_disadvantage

Government launches consultation on Sayce Review proposals



The Government is launching a consultation into employment services for disabled people and seeking views on recommendations put forward by Radar Chief Executive Liz Sayce in

her recent report *Getting in, staying in and getting on*.

The Sayce Review recommends that employment support should be focused on the individual and not the institution, so disabled people can access jobs across the economy rather than in segregated employment.

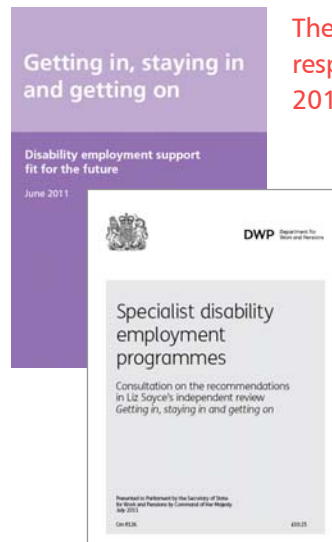
Liz Sayce said:

"The work aspirations of disabled people have changed. People want the chance to work in every role from hairdressing to engineering, in every area of the economy. That is why I recommend support that goes with the person – by opening up the Access to Work programme so disabled people can have the same choice of jobs as everyone else and improving support to people with fluctuating conditions, those working in small businesses, and people seeking work experience and internships.

There was a consensus amongst disability organisations that segregated employment is not the right model for the 21st Century. There is the potential to help around 35,000 more disabled people through the changes I am recommending, by spending the money we have more effectively and ensuring people who are most disadvantaged get more effective support"

The consultation asks for views concerning:

- individual support and funding for disabled people;
- changes to access to work provisions;
- movement of Remploy to the private sector;
- phasing out of Government funding to Remploy;
- the future of Remploy;
- removal of DWP funding to residential training colleges;
- alternative funding to residential colleges;
- removal of special protection to supported business places;
- merging of work choice and access to work; and
- suggestions for changing specialist disability employment support.



The closing date for responses is 17 October 2011.

You can access the Sayce Review and the consultation on its recommendations @ www.dwp.gov.uk/sayce-consultation

BBC SEEKING HELP TO EXPOSE 'POSTCODE LOTTERY' OF CARE

A new BBC series is being produced which will highlight how disabled people and carers experience a 'postcode lottery' in support.

Have you/the people you represent been affected by council care service eligibility or charging policies?

Has where you/the people you support live affected what services people can/can't receive?

If you think you or your family's support has been subject to a postcode lottery, this is your chance to share your experience and help influence change.

Please email your experience to: postcodelottery@presentable.co.uk

Members' section

DA Member's Advice Service: 'Ask Ken'

Ken Butler highlights some recent advisers' queries

? Last year, my client appealed a decision in that she did not qualify for employment and support allowance (ESA) on the grounds that she did not pass the work capability assessment (WCA). She is soon to finally have her appeal heard. However, will the tribunal now consider if she meets the 'new' WCA test rather than the previous one?

A new version of the WCA was introduced by the *Employment and Support Allowance (Limited Capability for Work and Limited Capability for Work-Related Activity) (Amendment) Regulations 2011* (SI.No.228/2011).

These regulations came into force from 28 March 2011.

However, the tribunal are only empowered to consider if the client met the WCA that existed at the time the decision under appeal was made - it cannot even consider if your client's health has improved or deteriorated since that date.

In trying to establish what version of the WCA has applied in an individual's client's case the following may be useful.

Due to the 28 March 2011 changes the ESA50 limited capability for work questionnaire issued to new claimants was revised accordingly.

Those receiving a new ESA50 questionnaire (reflecting the new regulations) will have a determination made under the new regulations and this new ESA50 began being issued from 14 March 2011 (no determinations being made under the new WCA regulations until at least 28 March 2011).

While claimants have been issued with the new version of ESA50 from 14 March there will be some instances after that date where they may have received the old version (for example, if they lost their original 'old version' ESA50 then an old version would be issued and they would be treated under the old regulations).

This also means there was a period largely from April to May 2011 where determinations would continue to have been made under the old WCA regulations as these would be people who received an 'old version' ESA50 before 14 March 2011 (with the ESA assessment phase being 13 weeks long).

While all ESA decisions being made now will almost certainly be under the new WCA it is worth checking to see if a client knows when their ESA50 was sent to them and what completed version is reproduced in any appeal papers.

? My client has been refused contributory ESA on the grounds that she does not meet one of the contribution conditions ie that she has not been paid or credited with at least 26 weeks Class 1 national insurance contributions in each of the last two complete tax years before her claim.

However, she has only recently finished four years continuous employment with the same small firm and has wage slips and P60s that show national insurance has been deducted by them for her earnings. She has appealed the ESA decision but should she do anything else?

From what you've said, your client's ex-employer has deducted but not paid to HMRC her national insurance contributions.

However, regulation 60 of the *Social Security (Contributions) Regulations 2001* does provide that Class 1 national contributions can be treated as paid if an employer has failed to pay them to the Revenue and you have not been negligent, connived or consented to this.

Although your client has appealed against the DWP decision she should also within 30 days of the decision date submit a written appeal to the Revenue maintaining that:

- she should be treated as paying Class 1 national insurance contributions throughout the period that she was employed; and
- citing that regulation 60 should apply in her case.

I don't believe that HMRC has a special appeal form for this purpose but I would include all the following information: her full name, address, NI number, date of decision, grounds for appeal accompanied by the signature of the client.

She should also include the originals of her P60s and wage slips and keep a copy of these and her appeal letter and send these by recorded delivery. This is because the Revenue are likely to require sight of original documents and not just copies.

I would also send a copy and covering letter to the DWP appeals section asking it to liaise with HMRC about her appeal.

HMRC has produced an appeal guide that might be helpful and it can be found @ www.hmrc.gov.uk/complaints-appeals/how-to-appeal/direct-tax.htm

'Ask Ken' your tax credits and benefits questions?



Our member organisations' advice service is hosted by Ken Butler. Ken helps members with complex queries and handles a range of different issues.

Support service available five days a week

Ken is now able to take your calls on the members' helpline: 020 7247 9342 Monday to Friday 10am-12noon and 2-4pm. Or email Ken at: kbutler@disabilityalliance.org

Unfortunately, Disability Alliance is not resourced to answer queries from individuals. To find a local advice centre visit: www.disabilityalliance.org/f15.htm

**Disability
alliance**

DA advisers talk about welfare benefit reform

Disability Alliance advisers have been out and about in the last few months giving briefings, training and talks to member organisations about this year's benefit reforms, and those under the Welfare Reform Bill. Areas of particular interest include personal independence payment and universal credit plans.

We have delivered presentations and run workshops at the:

- UK Stroke Assembly;
- PINNT annual conference, the national charity supporting patients on intravenous and nasogastric nutrition therapy
- DeBRA annual conference, the national charity supporting people who have the genetic skin blistering condition Epidermolysis Bullosa;
- MDF annual conference, the Bipolar Organisation; and
- Habinteg Housing Association regional staff forums.

We have also recently hosted a meeting for a visiting delegation of a Chinese Municipal Disabled Persons' Federation on how the British social security system supports disable people.

If you would like a DA speaker or trainer at your meeting:

Contact Ken Butler at kbutler@disabilityalliance.org for further information and charges. DA members are entitled to discounted rates

New home for Skill at Disability Alliance

Skill: National Bureau for Students with Disabilities closed in April 2011. Following a period of financial difficulty, Skill's Board of Trustees decided it was no longer viable to keep the charity open. Skill advisers Andrea Lewis and Tony Stevens explain what's happening at their new home at Disability Alliance ...

Services now available

Although Skill will not be returning in its previous form, Disability Alliance has been supported the Department for Business, Innovation and Skills to fill part of the gap. We are delighted to announce that the following services are now available.

Helpline service for students, parents, carers and advisers

Freephone helpline 0800 328 5050
Available on Tuesday 11.30am-1.30pm and Thursday 1.30pm-3.30pm or email skill4disabledstudents@disabilityalliance.org

Updated information booklets for disabled students

Available on the Disability Alliance website at www.disabilityalliance.org/skillpublications.htm

Policy and campaigns work

Disability Alliance has a strong track record in evidence-based campaigning with disabled people to break the link between poverty and disability. Disability Alliance will continue Skill's work to include disabled students in policy development and trying to influence government policy on education and training. We are very keen for people to get involved, tell us their stories and provide feedback. For more information please contact Andrea on alewis@disabilityalliance.org

Membership

There is a new membership package for former Skill members. For more information please contact Tony on tstevens@disabilityalliance.org



Andrea Lewis, Skill Policy Advisor Tony Stevens, Skill Helpline Advisor

Disability Alliance has already been active on the education policy side, submitting a response to the government Green Paper *Support and aspiration: A new approach to special educational needs and disability*. DA made a number of recommendations to improve outcomes for children and young disabled people or have special educational needs (SEN).

Disability Alliance also commented on the Higher Education White Paper (HEWP). DA welcomed government proposals to mitigate the impact of fee rises on those from disadvantaged groups. However we expressed concern over the lack of focus regarding disabled people, who are twice as likely to live in poverty, face additional costs associated with their disability and, as a group, are less satisfied with their experience of higher education (HE). The briefing outlined some of the key issues facing disabled students and suggested ways in which funding can be made more flexible in order to ensure disabled people have equal access to HE and the support they need to complete their course.

Disability Alliance education responses and briefings are available to view at www.disabilityalliance.org/skillnew.htm

Disability Rights Handbook updates

Changes to benefits and services – page by page amendments

These pages update the 36th edition of the Disability Rights Handbook based on information available up to July 2011.

Blue Badge scheme

Qualification

From 17 June 2011, qualification for the Blue Badge scheme has been extended to include anyone who receives a lump sum payment from the Armed Forces Compensation scheme within tariff levels 1 to 8 inclusive and has been certified as having a permanent and substantial disability which causes inability to walk or very considerable difficulty in walking (Statutory Instrument 2011/1307).

UPDATES SECTION B Chapter 4(1) p34

Claims and payments

Appointees

From this year onwards, appointeeships will be reviewed by the Pension, Disability & Carers Service periodically. Appointeeships for children and pension age claimants will be reviewed every five years, and those of working age claimants every eight years.

UPDATES SECTION T Chapter 58(4) p247

Employment and support allowance

Work-capability assessment: face-to-face assessment

From June 2011 the report produced by the DWP-approved healthcare professional (the ESA85) will contain a '*personalised summary statement*'. This will provide the healthcare professional with an opportunity to justify their descriptor choices in both parts of the assessment and to explain where their choice of descriptor differs from that of the claimant.

UPDATES SECTION D Chapter 10(6) p58

Work-focused interviews

From 1 June 2011, the definition of good cause for failure to attend or participate in a work-focused interview has been simplified: in deciding whether a person has shown good cause for the failure, the decision maker must take account of all the circumstances of the case including in particular the person's physical or mental health or condition (Statutory Instrument 2011/1349).

UPDATES SECTION D Chapter 9(15) p50

Work-related activity

From 1 June 2011, the rules with respect to the work-related activity conditions which apply to claimants in the work-related activity group have been changed (Statutory Instrument 2011/1349).

The conditions will not apply to anyone who is:

- a lone parent responsible for a child under the age of 5;
- entitled to a carer's allowance; or
- entitled to a carer premium.

The conditions must be reasonable in the view of the decision maker, having regard to the claimant's circumstances; and may not require the claimant to:

- apply for a job or undertake work, whether as an employee or otherwise; or
- undergo medical treatment.

Lone parents with a child under the age of 13, may only be required to undertake work-related activity during the child's normal school hours.

UPDATES SECTION D Chapter 9(7) p46

National insurance credits

Credits for caring

The CF411 claim-form for national insurance credits for parents and carers of children is available from HMRC (0845 302 1479; <http://www.hmrc.gov.uk/forms/cf411.pdf>), not the Benefit Enquiry Line.

CORRECTS SECTION D Box D.7 p62

Means-tested benefits

Severe disability premium

For greater clarity, replace: '*A non-dependent is someone who lives in your home...*' with: '*A non-dependent is someone who lives in the same home...*'

CLARIFIES SECTION J Chapter 24(3) p133 under 'Living alone?'; first paragraph

Social fund

Repeat applications

From 4 July 2011, the period in which you cannot make a repeat application for a community care grant or crisis loan for the same item has been extended from 28 days to one year.

UPDATES SECTION I Chapter 23(2) p125

Tax credits

Qualification conditions

For greater clarity, replace second bullet with:

- 'you or your partner qualify for the disability element (see 8 below);'

CLARIFIES SECTION G Chapter 18(5) p95

Reviews

Claimants receiving maximum tax credits due to the receipt of income support, income-based jobseeker's allowance, income-related employment and support allowance or pension credit may not have to complete a tax credits renewal form this year. Claimants who were on one of these benefits for the whole of 2010/11 should receive an 'annual review notice' instead. They will be required to report any errors in the information provided on this notice or changes of circumstances that taken place. The tax credits claim for 2010/11 will be finalised on the information that HMRC hold, and the claim for 2011/12 will consequently be renewed automatically.

UPDATES SECTION G Chapter 18(11) p100

Vehicle Excise Duty

Certificate of Entitlement

From 24 October 2011 claimants awarded DLA high rate mobility will receive a one-page re-useable *Certificate of Entitlement*. This will last for the duration of the claimant's mobility award. It will only be issued once and will be required each time the claimant needs to renew their tax disc.

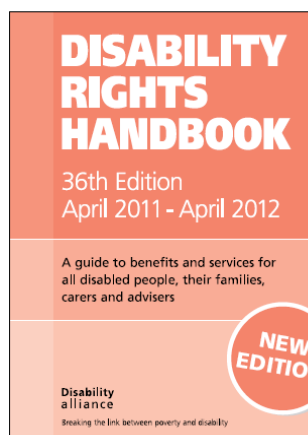
UPDATES SECTION B Chapter 5(2) p35

Young disabled people

Becoming a claimant

The child benefit or carer's allowance of a parent does not stop solely because their child becomes entitled to carer's allowance themselves.

CORRECTS SECTION N Chapter 39(1) p193



Everything you need to know about welfare benefits and tax credits

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Case law digest

Highlighting key decisions and judgements

Ken Butler, DA's benefits and tax credits advisor provides you with a summary and discussion of the implications of recent case law, including Upper Tribunal decisions and Court judgments.

Using case law

Our aim is to highlight important issues which will help you with claims or appeals, particularly those in relation to disability benefits. We read and summarise decisions on all benefits and have done so for many years.

You can view these summaries and usually a link to the actual decision at www.disabilityalliance.org/digest.htm and if you do not have internet access you can write to us.

To find the complete decision or judgement

If you are considering using any of these decisions at an appeal, it is important to read the whole decision, so that you understand its context. To find an Upper Tribunal decision or Court judgment (including older decisions) see our Factsheet F19: *Finding the Law* at www.disabilityalliance.org/f19.htm

FAQs

If you are unfamiliar with the terminology, have a look at our frequently asked law questions (FAQ) page at www.disabilityalliance.org/ask4.htm. You can even submit your own FAQ.

Below is a selection of decisions issued since our last Update. For fuller summaries and other decisions see www.disabilityalliance.org/comm9.htm

Assessment of GP's evidence

In what he highlights as an "important case", CDLA/2701/2010, Judge Jacobs considers the issue of the inferences that may be drawn from GP's medical evidence and the adequacy of the reasons a tribunal is required to give to explain inferences it may have drawn.

Judge Jacobs says that this issue is important for at least two reasons: it regularly arises and it involves fundamental issues about effective access to the appeal process and equality between the parties.

The claimant in this case suffered from arthritis; high blood pressure; underactive thyroid; curvature of the spine; liver problems; and asthma. In making her claim for disability living allowance (DLA) she identified problems with mobility, self-care by day, and cooking.

A tribunal had dismissed her appeal against the decision to refuse her DLA and in doing so, it relied on a medical report from an examining medical practitioner finding that two reports from her GP were not helpful.

In setting aside the tribunal's decision, Judge Jacobs systematically 'picks apart' the tribunal's approach to the two GP reports by highlighting four comments in its reasoning.

First: "... the doctor who wrote the second report "had not carried out a specific examination."

Judge Jacobs holds that: *"If this means an examination specifically directed to the requirements for disability living allowance, this is correct. However, the doctor had examined the patient and had available the claimant's full records. They would include all consultations, records of examinations, reports of x-rays and scan, and reports by Consultants that would include their own clinical findings. That is by far a greater body of evidence, accumulated over time, than is available to an examining medical practitioner."*

Second: "... it appeared that [the GP] had formed his view on the basis of information provided by the appellant."

Judge Jacobs again dismisses this interpretation as: *"If this means that the doctor's evidence is in some way unreliable because it has taken account of the claimant's own account, it is also wrong. In assessing disablement, all doctors should take account of information provided by the claimant. There is no precise formula by which disability can be equated to particular clinical findings or appearances on x-rays and scans. Examining medical practitioners interview claimants and take what they say into account, but their evidence is (rightly) not discounted for doing so."*

Third: “The earlier GP report which was unable to provide any specific information appears to suggest that the medical records did not contain any historic information in relation to the appellant’s physical limitation.”

While it is true, the Judge says, that the first GP report did not provide this information this is not a necessary inference: *“There may be many reasons why a GP does not include information in a report. Some GPs resent being required to provide these reports. Others give them little attention, perhaps because of pressure of other duties.”*

Fourth: “Neither document gave any indications to the appellant’s walking ability.”

Judge Jacobs agrees that this was correct of the first report and that the second report did not specify any particular distance, time, manner or distance for the claimant’s walking. However, he highlights that nevertheless: *“... the doctor did refer to difficulties in weight bearing, which is surely relevant to mobility. Moreover, GPs are not generally experienced in estimating distances, so any precise indication on that matter would not be of much value as evidence.”*

In concluding remarks, Judge Jacobs reiterates that evidence from GP’s should not be automatically treated as in conflict with that of an examining medical practitioner: *“All too often, judges present the tribunal’s reasons as if the tribunal had a choice between accepting the evidence of the GP or of the examining medical practitioner. There may be cases where that is so, but in many cases the reports each have their strengths and each their limitations as an assessment of the claimant’s disablement. In those cases, what a proper analysis usually requires is for the tribunal to show a balance between the value that can be distilled from each report and its limitations.”*

The reasoning of CDLA/2701/2010 is applicable to not just DLA appeals but equally to those relating to the work capability assessment and can be usefully cited in First Tier tribunal cases where a client’s doctor’s evidence is submitted to counter that of an examining medical practitioner.

It is also an important point of reference for advisers who are seeking to appeal to the Upper Tribunal on the grounds, for example, that undue weight was given to the examining medical practitioner’s report as opposed that of the client’s own GP.

Other decisions of interest

Here is a selection of other decisions issued since the last Update. You can view a fuller summary of these and other decisions @ www.disabilityalliance.org/comm10.htm

Incapacity Benefit in Youth

Lucy Stewart v Secretary of State for Work and Pensions (ECJ Case C-503/09): This case concerns a young woman with Downs Syndrome who moved with her parents to live in Spain when she was 10 years old. When she turned 16, she claimed incapacity benefit in youth, but was refused because she did not satisfy the presence and ordinary residence tests. The Court held that short-term incapacity benefit in youth was an invalidity benefit for the purposes of EEC Regulation 1408/71, and therefore incapacity benefit in youth can be claimed by people living in other EU states. The same principle should also apply to contributory ESA in youth.

Employment and Support Allowance

CE/497/2010 [2011] UKUT 158 (AAC): Essentially this decision holds that the test for altered consciousness as outlined in R(IB)2/07 (when he or she is no longer properly aware of his surroundings or his condition so as to be incapable of any deliberate act) cannot be applied to the ESA descriptor. This is because the revised ESA wording – “resulting in significantly disrupted awareness or concentration” – applies a different test.

Housing Benefit

CH/1312/2010 [2011] UKUT 198 AAC: The claimant lived with his wife, their son and two daughters, both of whom needed separate bedrooms as a result of their disabilities. With a tribunal having dismissed his appeal against the decision that he could only be awarded the three bedroom rate of local housing allowance (LHA) he appealed to the Upper Tribunal.

In dismissing the appeal, Judge Turnbull discusses and approves of CH/2823/2009 (*IB v Birmingham City Council*) that held that the discrimination experienced by a disabled claimant - who needed an overnight carer but could not be awarded an extra bedroom for LHA purposes – was objectively justified. However, as was the case in CH/2823/2009, Judge Turnbull says that he will give the claimant permission to appeal to the Court of Appeal if he requested.

Future changes

A timetable of forthcoming benefit and tax credit changes

Updated by Martin Inch DA's webmaster and rights advisor

Please note: This timetable may be subject to change due to the change in Government. You should regularly check our online forthcoming changes pages at www.disabilityalliance.org/forthcoming.htm for updates.

December 2011	Transfer of dependents additions to child tax credit The proposed date for the transfer to child tax credit of claimants who receive income support/income-based jobseeker's allowance child additions is now 31 December 2011.
January 2012	Single under 25 rate for LHA Single under 25 rate for LHA (one bedroom in shared accommodation) extended to single people under 35.
January 2012	Lone parents Lone parents whose youngest child is aged 5 or above will be eligible for jobseeker's allowance rather than income support.
April 2012	Contributory ESA Contributory employment and support allowance for those in the work related activity group will be time limited to one year.
April 2012	Youth ESA Abolition of youth ESA for new claimants. Existing claimants at that date will be able to continue claiming, but entitlement will be limited to 12 months. Time spent on youth ESA prior to April 2012 will count towards the time limit.
April 2012	Discretionary housing payments The Government contribution to discretionary housing payments will be increased by £40 million in each year from 2012-13.
April 2012	Tax credits backdating The period for which a tax credit claim and certain changes of circumstances can be backdated will be reduced from three months to one month.
April 2012	Tax credits and couples Couples with children must work 24 hours a week between them, with one partner working at least 16 hours a week in order to qualify for the WTC.
April 2012	Tax credits in year falls in income A disregard of £2,500 will be introduced in the tax credits system for in-year falls in income.
April 2012	50 plus element The 50 plus element will be removed from the working tax credit.
From 2013	Benefits cap A new £500 a week cap on welfare benefits will apply to combined income derived from benefits including jobseekers allowance, income support, employment support allowance, housing and council tax benefits, child benefit, and carer's allowance. benefits like social fund loans and free school meals are not affected, and people with disability living allowance and war widows will also be excluded.
From 2013	Child benefit Child benefit withdrawn from households paying tax at the higher rate.
April 2013	Replacement of disability living allowance Working age Disability living allowance (DLA) to be replaced by a new Personal Independence Payment.

April 2013	Tax credits in-year rises The level of in-year rises of income that will be disregarded from calculations of tax credit entitlement will decrease from £10,000 to £5,000.
April 2013	Housing Benefit Local housing allowance rates will be uprated in line with consumer price index. Housing entitlements for working age people in the social sector will reflect family size. Housing benefit awards will be reduced to 90% of the initial award after 12 months for claimants receiving jobseekers allowance.
May 2013	Universal credit Universal credit pilots begin.
October 2013	Universal credit National roll out of universal credit.
March 2014	Migration from IB to ESA Migration of existing incapacity benefits claimants (incapacity benefit, severe disablement allowance and income support on disability grounds) onto employment and support allowance should be completed by the end of March.
April 2015	Post office card account Post Office card account (POCA) to be reviewed.
April 2020	State pension age State pension age for both men and women increases to 66.
